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No. 1048

In the Supreme Court of the United States

OCTOBER TERM, 1969

MURRAY FRIEDLANDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted on two counts charging him with knowing possession of property (twelve tons of copper wire, television sets, radios, and high fidelity consoles) which had been stolen from interstate commerce, in violation of 18 U.S.C. 659. He was sentenced to concurrent terms of four years' imprisonment. The court of appeals affirmed *per curiam* (Pet. App. 21-22).

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Petitioner raises here precisely the same contentions which the court below rejected as "totally without merit" (Pet. App. 22). He argues that the evidence showing his possession of the recently stolen property was insufficient to support the common law inference of knowledge that the property was stolen;* that there was prejudicial error resulting from the opening remarks of the prosecutor; that evidence was improperly received concerning telephone conversations regarding the stolen merchandise because of the witness' inability to identify the other party's voice; and that a statement of petitioner to FBI agents was inadmissible under *Miranda* v. *Arizona,* 384 U.S. 436.

As to certain of these contentions, the facts adduced in the petition itself establish their insubstantiality. For example, the claim that there was further interrogation of petitioner after he had been given the warnings required by *Miranda* v. *Arizona,* 384 U.S. 436, and after he stated he would not answer any questions until he spoke to his attorney, is refuted by the testimony quoted in the petition (see Pet. 11–13). As this testimony indicates, there was no further interrogation after the warning; petitioner's comments introduced at trial were volunteered and not in response to any questioning.

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*The claim is based on the assertion that the only kind of possession proved was constructive rather than actual. Even assuming *arguendo* that this was the case, such possession sufficiently supports an inference of knowledge that the property was stolen. *United States* v. *DeSisto,* 329 F. 2d 929, 935 (C.A. 2), certiorari denied, 377 U.S. 979.

As for the claim that government counsel made prejudicial remarks in his opening argument (Pet. 5, 17–18), petitioner overlooks the fact that the court shortly thereafter specifically admonished the jury that opening statements are not evidence and should not be considered as such by the jury. The remaining claims similarly do not warrant further review by this Court.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1970.

[1] All of petitioner's contentions are comprehensively discussed in the government's brief in the court of appeals, a copy of which we are filing herewith.

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